

SB0210S01 compared with SB0210

~~deleted text~~ shows text that was in SB0210 but was deleted in SB0210S01.

inserted text shows text that was not in SB0210 but was inserted into SB0210S01.

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Senator Todd D. Weiler proposes the following substitute bill:

PAID LEAVE MODIFICATIONS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd D. Weiler

House Sponsor: _____

LONG TITLE

General Description:

This bill requires certain state employers to offer paid parental leave.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires certain state employers to provide certain employees paid parental leave upon:
 - the birth of the employee's child;
 - the adoption of a minor child; or
 - the appointment of legal guardianship of a minor child;
- ▶ requires the Department of Human Resource Management to adopt rules to administer parental leave; and

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- ▶ allows the Department of Administrative Services to transfer certain money for the costs of parental leave.

Money Appropriated in this Bill:

This bill appropriates in fiscal year 2022:

- ▶ to the Department of Administrative Services -- Finance Mandated Paid Parental Leave -- Paid Parental Leave, as ongoing appropriation:
 - from the General Fund, \$1,752,200.

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

63J-1-206, as last amended by Laws of Utah 2020, Chapters 152, 231, 402 and last amended by Coordination Clause, Laws of Utah 2020, Chapter 231

67-19-14.7 (Effective 07/01/21), as last amended by Laws of Utah 2020, Fifth Special Session, Chapter 20

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **63J-1-206** is amended to read:

63J-1-206. Appropriations governed by chapter -- Restrictions on expenditures --

Transfer of funds -- Exclusion.

(1) (a) Except as provided in Subsections (1)(b) and (2)(e), or where expressly exempted in the appropriating act:

(i) all money appropriated by the Legislature is appropriated upon the terms and conditions set forth in this chapter; and

(ii) any department, agency, or institution that accepts money appropriated by the Legislature does so subject to the requirements of this chapter.

(b) This section does not apply to:

(i) the Legislature and its committees; and

(ii) the Investigation Account of the Water Resources Construction Fund, which is governed by Section 73-10-8.

(2) (a) Each item of appropriation is to be expended subject to any schedule of

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programs and any restriction attached to the item of appropriation, as designated by the Legislature.

(b) Each schedule of programs or restriction attached to an appropriation item:

(i) is a restriction or limitation upon the expenditure of the respective appropriation made;

(ii) does not itself appropriate any money; and

(iii) is not itself an item of appropriation.

(c) (i) An appropriation or any surplus of any appropriation may not be diverted from any department, agency, institution, division, or line item to any other department, agency, institution, division, or line item.

(ii) If the money appropriated to an agency to pay lease payments under the program established in Section 63A-5b-703 exceeds the amount required for the agency's lease payments to the Division of Facilities Construction and Management, the agency may:

(A) transfer money from the lease payments line item to other line items within the agency; and

(B) retain and use the excess money for other purposes.

(d) The money appropriated subject to a schedule of programs or restriction may be used only for the purposes authorized.

(e) In order for a department, agency, or institution to transfer money appropriated to it from one program to another program within a line item, the department, agency, or institution shall revise its budget execution plan as provided in Section 63J-1-209.

(f) (i) The procedures for transferring money between programs within a line item as provided by Subsection (2)(e) do not apply to money appropriated to the State Board of Education for the Minimum School Program or capital outlay programs created in Title 53F, Chapter 3, State Funding -- Capital Outlay Programs.

(ii) The state superintendent may transfer money appropriated for the programs specified in Subsection (2)(f)(i) only as provided by Section 53F-2-205.

(3) Notwithstanding Subsection (2)(c)(i):

(a) the state superintendent may transfer money appropriated for the Minimum School Program between line items in accordance with Section 53F-2-205;

(b) the Department of Administrative Services may transfer money appropriated for the

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purpose of paying the costs of paid employee parental leave and postpartum recovery leave under Section 67-19-14.7 to another department, agency, institution, or division; and

(c) the Department of Administrative Services may transfer or divert money to another department, agency, institution, or division only for the purposes of coordinating and providing a state response to the coronavirus.

Section 2. Section **67-19-14.7 (Effective 07/01/21)** is amended to read:

67-19-14.7 (Effective 07/01/21). Parental leave -- Postpartum recovery leave.

(1) As used in this section:

(a) "Parental leave" means leave hours a state employer provides to a parental leave eligible employee.

~~[(a)]~~ (b) "[Eligible] Parental leave eligible employee" means an employee who:

(i) is in a position that receives retirement benefits under Title 49, Utah State Retirement and Insurance Benefit Act;

(ii) accrues paid leave benefits that can be used in the current and future calendar years;

(iii) is not reemployed as defined in Section 49-11-1202; and

~~[(iv) gives birth to a child.]~~

(iv) (A) is a birth parent as defined in Section 78B-6-103;

(B) legally adopts a minor child, unless the individual is the spouse of the pre-existing parent;

(C) is the intended parent of a child born under a validated gestational agreement in accordance with Title 78B, Chapter 15, Part 8, Gestational Agreement; or

(D) is appointed the legal guardian of a minor child.

~~[(b)]~~ (c) "Postpartum recovery leave" means leave hours a state employer provides to
~~[an]~~ a postpartum recovery leave eligible employee to recover from childbirth.

~~[(c)]~~ (d) "Retaliatory action" means to do any of the following to an employee:

(i) dismiss the employee;

(ii) reduce the employee's compensation;

(iii) fail to increase the employee's compensation by an amount that the employee is otherwise entitled to or was promised;

(iv) fail to promote the employee if the employee would have otherwise been promoted; or

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(v) threaten to take an action described in Subsections (1)~~[(e)]~~[(d)](i) through (iv).

(e) "Postpartum recovery leave eligible employee" means an employee who:

(i) is in a position that receives retirement benefits under Title 49, Utah State

Retirement and Insurance Benefit Act;

(ii) accrues paid leave benefits that can be used in the current and future calendar years;

(iii) is not reemployed as defined in Section 49-11-1202; and

(iv) gives birth to a child.

~~[(d)]~~ (f) (i) "State employer" means:

(A) a state executive branch agency, including the State Tax Commission, the National Guard, and the Board of Pardons and Parole;

(B) the legislative branch of the state; or

(C) the judicial branch of the state.

(ii) "State employer" does not include:

(A) an institute of higher education;

(B) the Utah Board of Higher Education;

(C) the State Board of Education;

(D) an independent entity as defined in Section 63E-1-102;

(E) the Attorney General's Office;

(F) the State Auditor's Office; or

(G) the State Treasurer's Office.

(g) "Qualified employee" means:

(i) a parental leave eligible employee; or

(ii) a postpartum leave eligible employee.

(2) (a) Except as provided in Subsection ~~[(3), a state employer shall allow an eligible employee to use up to 120 hours of paid postpartum recovery leave based on a 40-hour work week for recovery from childbirth.]~~ (4) and (5), a state employer shall:

(i) allow a parental leave eligible employee to use up to 120 hours of paid parental leave based on a 40-hour week for:

(A) the birth of the parental leave eligible employee's child;

(B) the adoption of a minor child; or

(C) the appointment of legal guardianship of a minor child; and

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(ii) allow a postpartum recovery leave eligible employee to use up to 120 hours of paid postpartum recovery leave based on a 40-hour work week for recovery from childbirth.

(b) A state employer shall allow ~~[an eligible]~~ a qualified employee who is part-time or who works in excess of a 40-hour work week or its equivalent to use the amount of parental leave or postpartum recovery leave available to the ~~[eligible]~~ qualified employee under this section on a pro rata basis as adopted by rule by the department under Subsection ~~[(11)]~~ (12).

(3) (a) Parental leave described in Subsection (2)(a)(i):

(i) may not be used before the day on which:

(A) the parental leave eligible employee's child is born;

(B) the parental leave eligible employee adopts a minor child; or

(C) the parental leave eligible employee is appointed legal guardian of a minor child;

(ii) may not be used more than six months after the date described in Subsection

(3)(a)(i);

(iii) may not be used intermittently, unless:

(A) by mutual written agreement between the state employer and the parental leave eligible employee; or

(B) a health care provider certifies that intermittent leave is medically necessary due to a serious health condition of the child;

(iv) runs concurrently with any leave authorized under the Family and Medical Leave Act of 1993, 29 U.S.C. Sec. 2601 et seq.; and

(v) runs consecutively to postpartum recovery leave.

(b) The amount of parental leave authorized under Subsection (2)(a)(i) does not increase if a parental leave eligible employee:

(i) has more than one child born from the same pregnancy;

(ii) adopts more than one minor child; or

(iii) is appointed legal guardian of more than one minor child.

(c) A parental leave eligible employee may not use more than 120 hours of paid parental leave within a single 12-month period, regardless of whether during that 12-month period the parental leave eligible employee:

(i) becomes the parent of more than one child;

(ii) adopts more than one minor child; or

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(iii) is appointed legal guardian of more than one minor child.

~~[(3)]~~ (4) (a) Postpartum recovery leave described in Subsection (2)~~(a)(ii)~~:

(i) shall be used starting on the day on which the postpartum recovery leave eligible employee gives birth, unless a health care provider certifies that an earlier start date is medically necessary;

(ii) shall be used in a single continuous period; ~~[and]~~

(iii) runs concurrently with any leave authorized under the Family and Medical Leave Act of 1993, 29 U.S.C. Sec. 2601 et seq.; and

(iv) runs consecutively to parental leave.

(b) The amount of postpartum recovery leave authorized under Subsection (2)~~(a)(ii)~~ does not increase if ~~[an]~~ a postpartum recovery leave eligible employee has more than one child born from the same pregnancy.

~~[(4)]~~ (5) (a) Except as provided in Subsection ~~[(4)]~~ (5)(b), ~~[an-eligible]~~ a qualified employee shall give the state employer notice at least 30 days before the day on which the ~~[eligible]~~ qualified employee plans to:

(i) begin using parental leave or postpartum recovery leave under this section; and

(ii) stop using parental leave or postpartum recovery leave under this section.

(b) If circumstances beyond the ~~[eligible]~~ qualified employee's control prevent the ~~[eligible]~~ qualified employee from giving notice in accordance with Subsection ~~[(4)]~~ (5)(a), the ~~[eligible]~~ qualified employee shall give each notice described in Subsection ~~[(4)]~~ (5)(a) as soon as reasonably practicable.

~~[(5)-A]~~ (6) ~~[(A)]~~ Except as provided in Subsections (3)(a)(iv) and (4)(a)(iii), a state employer may not charge parental leave or postpartum recovery leave under this section against sick, annual, compensatory, excess, or other leave a qualified employee is entitled to.

~~[(6)]~~ (7) A state employer may not compensate ~~[an-eligible]~~ a qualified employee for any unused parental leave or postpartum recovery leave upon termination of employment.

~~[(7)]~~ (8) (a) Following the expiration of ~~[an-eligible]~~ a qualified employee's parental leave or postpartum recovery leave under this section, the state employer shall ensure that the ~~[eligible]~~ qualified employee may return to:

(i) the position that the ~~[eligible]~~ qualified employee held before using parental leave or postpartum recovery leave; or

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(ii) a position within the state employer that is equivalent in seniority, status, benefits, and pay to the position that the ~~[eligible]~~ qualified employee held before using parental leave or postpartum recovery leave.

(b) If during the time ~~[an-eligible]~~ a qualified employee uses parental leave or postpartum recovery leave under this section the state employer experiences a reduction in force and, as part of the reduction in force, the ~~[eligible]~~ qualified employee would have been separated had the ~~[eligible]~~ qualified employee not been using the parental leave or postpartum recovery leave, the state employer may separate the ~~[eligible]~~ qualified employee in accordance with any applicable process or procedure as if the ~~[eligible]~~ qualified employee were not using the parental leave or postpartum recovery leave.

~~[(8)]~~ (9) During the time ~~[an-eligible]~~ a qualified employee uses parental leave or postpartum recovery leave under this section, the ~~[eligible]~~ qualified employee shall continue to receive all employment related benefits and payments at the same level that the ~~[eligible]~~ qualified employee received immediately before beginning the parental leave or postpartum recovery leave, provided that the ~~[eligible]~~ qualified employee pays any required employee contributions.

~~[(9)]~~ (10) A state employer may not:

(a) interfere with or otherwise restrain ~~[an-eligible]~~ a qualified employee from using parental leave or postpartum recovery leave in accordance with this section; or

(b) take retaliatory action against ~~[an-eligible]~~ a qualified employee for using parental leave or postpartum recovery leave in accordance with this section.

~~[(10)]~~ (11) A state employer shall provide each employee written information regarding ~~[an-eligible]~~ a qualified employee's right to use parental leave or postpartum recovery leave under this section.

~~[(11)]~~ (12) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall, ~~[by]~~ on or before July 1, ~~[[2021]]~~ 2022, make rules for the use and administration of parental leave and postpartum recovery leave under this section, including a schedule that provides paid parental leave or postpartum recovery leave for ~~[an-eligible]~~ a qualified employee who is part-time or who works in excess of a 40-hour work week on a pro rata basis.

Section 3. **Appropriation.**

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The following sums of money are appropriated for the fiscal year beginning July 1, 2021, and ending June 30, 2022. These are additions to amounts previously appropriated for fiscal year 2022. Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, the Legislature appropriates the following sums of money from the funds or accounts indicated for the use and support of the government of the state of Utah.

ITEM 1

To Department of Administrative Services -- Finance

Mandated Paid Postpartum Recovery and Parental Leave

From General Fund ongoing \$1,752,200

Schedule of Programs:

Paid Postpartum Recovery and Parental Leave \$1,752,200

The Legislature intends that the Department of Administrative Services use the appropriation under this item to offset incremental costs associated with hiring a replacement employee, the payment of overtime to a current employee, or other labor-related costs due to an employee utilizing parental leave or postpartum recovery leave under Section 67-19-14.7. Any unexpended funds remaining at the end of each fiscal year lapses to the General Fund.

Section 4. Effective date.

This bill takes effect on July 1, 2021.